

BY AP

II. FACTS PERTAINING TO ARGUMENT

(i) At Mr. Calo's sentencing on December 16, 2016, the State noted that the court declined to apply the burglary antimerger statute at Michael Rowland's sentencing and merged the burglary and murder charges because Mr. Rowland "was one of the more minimal players" and that Calo "is one of the main players and that's why I'm asking the Court to apply that antimerger statute."

(ii) Contrary to this assertion by the state, Calo was not present at the scene of the crime and did not participate in commission of the offenses. In fact, there is the following testimony from co-defendant Robert Smith, that it was Jifarry Mendez who was giving the orders for the group to go commit the robbery.

RP 2000 at 14, 49794-8-II (Robert Smith)(DIRECT)

A. "I believe I was the last one there."

Q. "How long before of a meeting took place before everybody left to do something?"

A. "I would say no more than five minutes, if that."

Q. "What was taking place?"

A. "The guy Jifarry Mendez was just explaining to me what was going to happen, like where we're going to go."

(iii) The entire theory of the case is that the group of men, mostly all from different street gang groups, met up at Calo's garage, and Calo gave them orders to go rob a cartel stash house. Calo did not accompany the group when they left, and there is testimony that Mendez was giving the orders.

(iv) Despite the States assertion that Michael Rowland "was one of the more minimal players", Rowland was at the scene and participated with the group who ultimately committed the homicide. Calo was not there. Calo is the dyslexic Puerto Rican guy who worked for the police until the police decided to use the statements they were paying Calo snitch money to make, against him to establish probable cause to arrest him.

(v) These are the facts of the case, and were Calo afforded the effective assistance of counsel at his re-sentencing, who could flesh out these facts for the court, the likelihood that the outcome would have differed is probable verses possible.

III. AUTHORITY

(i) Dificient performance is performance falling "below an objective standard of reasonableness based on consideration of all the circumstances." *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).... a reasonable probability that it effected the outcome of the proceeding. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). ... the right to effective assistance of counsel at sentencing. *Gardner V. Florida*, 430 U.S. 349, 358, 97 S. Ct. 1197, 51 L.Ed.2d 393 (1977). *Strickland V. Washington*, 466 U.S. 668, 685, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

(ii) The sentencing courts decision not to consider Calo's argument for merger at re-sentencing, was a legal conclusion to be reviewed de novo. *Levy*, 156 Wn.2d at 733. An abuse of discretion occurs if the court's decision is manifestly unreasonable or rests on untenable grounds. *State v. Griffin*, 173 Wn.2d 467, 473, 268 P.3d 924 (2012).

IV. CONCLUSION

The facts and circumstances involved in Mr. Calo's case weigh in favor of a different outcome, were he permitted to argue the facts of his case in support of merger. Because Calo is dyslexic, RP 1113 at 24 (49794-8-II), The Court: "there was testimony that Mr. Calo was dyslexic.", he must be afforded the effective assistance of counsel at his new re-sentencing. Calo receives help from other inmates at the institutional law library. He prays for the relief of a new sentencing hearing, and or a reference hearing to develop facts in support of his contentions. This statement of additional grounds is in the interests of justice.

DATED this 12 day of March, 2020.


William Manuel Alvarez-Calo

FILED
COURT OF APPEALS
DIVISION II

2020 MAR 16 PM 1:01

STATE OF WASHINGTON

BY AP

STATE OF WASHINGTON)

NO. 53801-6-II

v.)

AFFIDAVIT OF SERVICE
BY MAILING

WILLIAM M. ALVAREZ-CALO)

I, WILLIAM MANUEL ALVAREZ-CALO, do hereby certify that I have served the following documents:

STATEMENT OF ADDITIONAL GROUNDS

WASHINGTON COURT OF APPEALS
DIVISION TWO
Upon: 950 BROADWAY, SUITE 300
TACOMA, WA 98402

By placing same in the United States mail at:

WILLIAM MANUEL ALVAREZ-CALO, 395946
MCC/TRU/A-609
P.O. BOX 888
MONROE, WA 98272

On this 11th day of March, 2020

X 

395946

Name & Number

Affidavit pursuant to 28 U.S.C. 1746. Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.